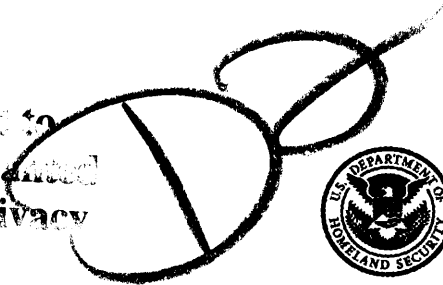


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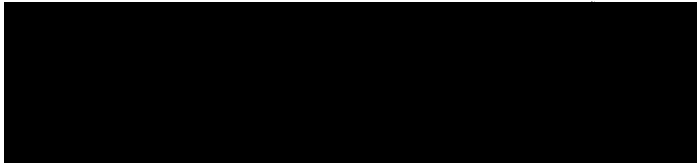
identifying data deleted to  
prevent clearly unwarranted  
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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

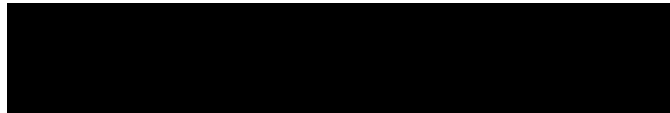


**U.S. Citizenship  
and Immigration  
Services**



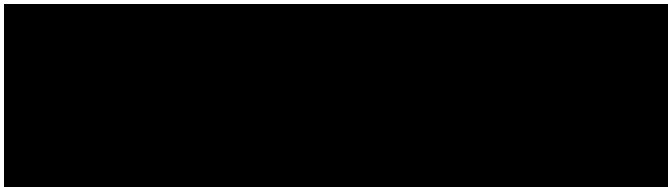
FILE: WAC 02 262 54674 Office: CALIFORNIA SERVICE CENTER Date: **APR 09 2004**

IN RE: Petitioner:  
Beneficiary:



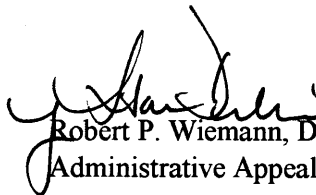
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a convalescent care center that seeks to employ the beneficiary as a physical therapy manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not licensed as a physical therapist. On appeal, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a physical therapist manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 3, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: coordinating the physical therapy areas of the center, including scheduling; overseeing decisions of the therapists regarding treatment procedures and protocols; suggesting treatment plans for patients; consulting with the physical therapists on problems and issues that arise regarding patient treatment; hiring and orienting new physical therapists; formulating a program budget; assisting with the administration, clinical planning, development, marketing and operations of the program; and establishing policies, procedures, standards and objectives for the treatment of patients. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in physical therapy.

The director found that the beneficiary would need to possess a license, as she would be engaged in the practice of physical therapy.

On appeal, counsel states that the beneficiary would not be engaging in physical therapy, since she would have no direct patient contact and that, instead, she would only be managing the physical therapy practice. Counsel goes to great lengths to provide definitions of the words used in the position description in an effort to support this assertion. Counsel also maintains that the position description does not fall under the definition of physical therapy as provided in the Business and Professions Code. Counsel states that the beneficiary would not "make decisions that directly involve the physical therapy care that is to be provided. Furthermore the beneficiary's suggestions as to treatment plans does [sic] not constitute the actual planing [sic] of treatment as this task is reserved for the Physical Therapist to undertake." Despite counsel's assertions, the information provided both in the petitioner's letter of support and in counsel's response to the director's request for evidence makes it clear that the beneficiary would have significant input regarding the treatment of patients. According to the response to the director's request for evidence, fully 65 percent of the beneficiary's time would be spent on activities that have a direct impact on the care patients would receive. While the beneficiary might not be actually providing the treatment to the patients, her decisions and actions would shape that treatment. The AAO does not concur with counsel that this position falls outside the licensing requirements for physical therapists.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the proffered position since she does not possess a valid license. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.